

March 31, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-30849
Summary Calendar

BENJAMIN L CRAVEN, On behalf of himself, individually,
and on behalf of all those similarly situated

Plaintiff - Appellant

v.

CANAL BARGE COMPANY, INC

Defendant - Appellee

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 03-CV-536

Before KING, Chief Judge, and EMILIO M. GARZA and BENAVIDES,
Circuit Judges.

PER CURIAM:*

Benjamin Craven (Craven) sued Canal Barge Co. (Canal) alleging violations of the Fair Labor Standards Act, 29 U.S.C. § 201, et seq. (FLSA) and Louisiana law. Canal moved for partial summary judgment, and the district court dismissed the state-law claims but not the FLSA claims, which were not the subject of Canal's motion.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

This court must examine the basis of its jurisdiction sua sponte if necessary. Mosley v. Cozby, 813 F.2d 659, 660 (5th Cir. 1987). The district court's grant of partial summary judgment did not dispose of all of the claims and was therefore not a final judgment under 28 U.S.C. § 1291. See Briargrove Shopping Ctr. Joint Venture v. Pilgrim Enters., 170 F.3d 536, 538-39 (5th Cir. 1999); Askenase v. LivingWell, Inc., 981 F.2d 807, 809-10 (5th Cir. 1993). In addition, there is no certification of finality or appealability under FED. R. CIV. P. 54(b) or 28 U.S.C. § 1292(b). Neither the order granting partial summary judgment nor the district court's order closing the case for statistical purposes shows an "unmistakable intent" to enter an appealable partial judgment under FED. R. CIV. P. 54(b). See Briargrove, 170 F.3d at 539. Further, FED. R. CIV. P. 23(f) does not apply.

Because there is no appealable judgment, we lack appellate jurisdiction, and the appeal is DISMISSED.

APPEAL DISMISSED.